

Decision 20-02-050 February 27, 2020

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Investigation on the  
Commission's Own Motion into the  
Operations, Practices and Conduct of the  
San Jose Water Company (U168W)  
Regarding Overbilling Practices.

Investigation 18-09-003

**PRESIDING OFFICER'S DECISION APPROVING SETTLEMENT**

**1. Summary**

We approve a settlement between San Jose Water Company and the Consumer Protection and Enforcement Division of the Commission that resolves all outstanding issues in the above-captioned proceeding. A copy of the Settlement Agreement is attached hereto as Attachment A. The proceeding is closed.

**2. Background of the Settlement**

The Commission issued this Order Instituting Investigation (OII) on September 14, 2018 to determine whether San Jose Water Company (SJWC) "repeatedly overcharged and double-billed its customers in violation of California Public utilities Code (PU Code) Section 542 as well as other Commission Orders." Attached to the OII was a copy of a staff report by the Consumer Protection and Enforcement Division (CPED) entitled *Investigation of Overbilling by San Jose Water Company* (Staff Report). On October 15, 2018, SJWC filed its Response to the OII and the Staff Report.

Waters Rates Advocates for Transparency, Equity and Sustainability (WRATES) filed a motion for party status on October 23, 2018, which motion was granted at the pre-hearing conference (PHC) held on January 7, 2019. On February 11, 2019, the Assigned Commissioner issued a scoping memo that identified the issues in the proceeding and adopted a schedule. In accordance with the schedule adopted in the scoping memo, the parties served prepared direct testimony on one another on March 18, 2019; SJWC served its prepared rebuttal testimony on April 8, 2019; and CPED served prepared sur-rebuttal testimony on May 6, 2019. An evidentiary hearing was on June 3, 2019 at which SPED and SJWC presented witnesses who sponsored the submission of their respective prepared testimony, including the Staff Report, into evidence. WRATES submitted into evidence a single cross-examination exhibit identified as WRATES-6.

Shortly after the evidentiary hearing, CPED and SJWC undertook settlement discussions, following which the assigned ALJ postponed submission of opening briefs until August 2, 2019 to give the parties time to work on a settlement. A noticed settlement conference was held among SJWC, CPED and WRATES on July 19, 2019, following which CPED and SJWC entered into the Settlement Agreement.

In late August 2019, the assigned Administrative Law Judge (ALJ) issued a Proposed Decision approving the settlement. On September 3, 2019, San Jose Water moved for withdrawal of the Proposed Decision on the grounds that the Public Utilities Code and Commission Rules enacted pursuant thereto require that an adjudicatory matter such as this case requires a Presiding Officer's Decision. On September 26, 2019, the ALJ issued a ruling granting the motion.

### **3. Issues Before the Commission**

The scoping memo identified three issues for determination in this proceeding

- A. Did SJWC overbill its customers for water service during the period from January 1987 to June 2017.
- B. If SJWC overbilled its customers during the above period, should the Commission fine the company or impose some other form of penalty on it?
- C. Is this action subject to any statute of limitation including, but not limited to, Section 736 of the Public Utilities Code?

### **4. Major Features of the Settlement Agreement**

The Settlement Agreement resolves all issue presented in or addressed by the OII and the Staff Report. Specifically, it resolves all outstanding issues between CPED and SJWC.

First, it resolves the overbilling allegations by having SJWC agree to make a series of payments for the benefit of its customers. SJC will refund \$1,757,237.99 in proration refunds, representing overcharges during the period from 1987 through May of 2011 resulting from SJWC's failure to apply rate proration of monthly service charges on customer bills for billing periods during which changes in such service charges became effective. These refunds will appear as one-time credits on customer bills and will be confirmed by SJWC in a Tier 1 advice letter.

For customers participating in SJWC's Water Rates Assistance Program, this one-time credit will be increased from the customer's pro rata portion of \$1,737,237.99 to \$25.00, representing a total additional credit of \$350,000.

In addition to issuing these customer credits, SJWC will invest \$5 million, funded by its shareholders, in capital improvements to the water system within

one year of the settlement. SJWC will neither earn any return on this investment nor recapture it through depreciation.

To the extent that SJWC could have asserted a statute of limitations defense to basing refunds on actions undertaken as long ago as 1987, it chose not to do so in the interest of achieving a settlement.

The settlement also addresses the Staff Report's allegations of double billing by SJWC. SJWC disputes those allegations and the settling parties agree that the evidentiary record is insufficient to support them. Because there was insufficient evidence to support a charge of double billing, the Settlement Agreement does not call for a penalty on SJWC.

On August 22, 2019 WRATES filed a brief in opposition to the settlement. Although the brief reiterated WRATES' concerns about San Jose Water's billing practices, it failed to articulate any material issue within the scope of this proceeding that is not related to the overbilling issue that has been resolved by the settlement. Accordingly, there is no basis for keeping the proceeding open.

In sum, approval of the Settlement Agreement will resolve all outstanding issues in this proceeding.

#### **5. The Settlement Agreement Meets the Criteria of Rule 12.1(d)**

The Settlement Agreement addresses all contested issues in this proceeding. Rule 12.1(d) requires that a settlement be "reasonable in light of the whole record, consistent with law, and in the public interest." Taken as a whole, the Settlement Agreement satisfies these standards for approving settlements for the reasons discussed below.

**A. The Settlement Agreement Is Reasonable in Light of the Whole Record**

The Settlement Agreement is reasonable in light of the whole record. Following discovery and settlement negotiations, the settling parties reached a reasonable compromise on each of the issues in contention. The settlement negotiations were accomplished at arms' length over the course of several days and there was no collusion.

**B. The Settlement Agreement Does Not Contravene Any Rules or Laws**

The settling parties are aware of no statutory provision or prior Commission decision that would be contravened or compromised by the Settlement Agreement. The issues resolved in the Settlement Agreement are within the scope of the proceeding and will produce a just resolution satisfactory to both settling parties.

**C. The Settlement Agreement Is in The Public Interest**

The Settlement Agreement is in the public interest. The Commission has explained that a settlement which "commands broad support among participants fairly reflective of the affected interests" and "does not contain terms which contravene statutory provisions or prior Commission decisions" well serves the public interest. *Re San Diego Gas & Elec.*, D.92-12-019, 46 CPUC 2d 538, 552.

Together, the settling parties fairly represent the affected interests: SJWC provides water service to approximately 1 million customers in the greater San Jose area, and CPED is statutorily mandated to protect the interests of such customers. The primary public interest affected by this proceeding is the interest of the customers of SJWC in being accurately billed for the services they receive. The Settlement Agreement advances this interest by correcting prior billing errors, arranging for related bill credits, and providing for increased capital

investment in SJWC at the sole expense of its shareholders. In addition, Commission approval of the Settlement Agreement will provide speedy resolution of contested issues, which will avoid unnecessary litigation expense, and will conserve Commission resources. The Commission has acknowledged that “[t]here is a strong public policy favoring the settlement of disputes to avoid costly and protracted litigation.” *Re PG&E*, D.88-12-083, 30 CPUC 2d 189, 221.

## **6. Conclusion**

The Settlement Agreement meets the Commission’s requirements for settlements and should be approved without modification.

## **7. Appeal of the Presiding Officer’s Decision**

On January 9, 2020 WRATES filed an appeal of the Presiding Officer’s Decision alleging that the Settlement Agreement failed to comply with Rules 11 and 12 of the Commission’s Rules of Practice and Procedure and otherwise deprived WRATES of adequate notice and opportunity to be heard regarding disputed issues. The appeal is without merit. The settlement conference that preceded the Settlement Agreement was held in accordance with a settlement timetable established by the presiding officer. WRATES received timely notice of the settlement conference and was invited to participate. The Settlement Agreement resolves all disputed matters within the scope of the proceeding in a manner that is beneficial to the ratepayers of SJWC. A desire for different or greater relief is not argument against adoption of the Settlement Agreement.

## **8. Assignment of Proceeding**

Martha Guzman Aceves is the assigned Commissioner and Karl J. Bemmesderfer is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. SJWC incorrectly pro-rated customer bills during months when billing rates changed between 1987 and May 2011 resulting in customer overcharges totaling \$1,757,237.99.
2. Evidence in the proceeding is insufficient to demonstrate additional overbilling by SJWC.
3. The settlement resolves all outstanding issues between SJWC and CPED.

### **Conclusions of Law**

1. The settlement is reasonable in light of the whole record.
2. The settlement does not contravene any rules or laws.
3. The settlement is in the public interest.
4. The settlement should be approved.

## **O R D E R**

### **IT IS ORDERED** that:

1. The Settlement Agreement between the Consumer Protection and Enforcement Division of the Commission and San Jose Water Company is approved without modification.
2. Investigation 18-09-003 is closed.

This order is effective today.

Dated February 27, 2020, at San Francisco, California.

MARYBEL BATJER

President

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

GENEVIEVE SHIROMA

Commissioners

# **ATTACHMENT A**



**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Investigation  
on the Commission's Own

Investigation 18-09-003

Motion into the Operations,  
Practices and Conduct of the San  
Jose Water Company (U168W)  
Regarding Overbilling Practices.

**SETTLEMENT AGREEMENT BETWEEN  
THE CONSUMER PROTECTION AND ENFORCEMENT DIVISION  
AND SAN JOSE WATER COMPANY**

**I. GENERAL PROVISIONS**

A. Pursuant to Article 12 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), the Commission’s Consumer Protection and Enforcement Division (“CPED”) and San Jose Water Company (“SJWC”), each referred to individually as a “Party” and together as “the Settling Parties,” have agreed on the terms of this Settlement Agreement, which they now submit for review, consideration, and approval by Administrative Law Judge Karl Bemmesderfer and the Commission.

B. This Settlement Agreement is intended to resolve all issues presented in or addressed by the Commission’s Order Instituting Investigation (“OII”) 18-09-003 or by the Staff Report, entitled “Investigation of Overbilling by San Jose Water Company,” which was submitted by Victor Bañuelos of CPED, dated August 16, 2018, and attached to the OII. Specifically, this Settlement Agreement resolves all outstanding issues in this proceeding between SJWC and CPED.

C. Specific issues that the Settling Parties agree to resolve through this Settlement Agreement are set forth in Section II, below.

D. Because this Settlement Agreement represents a compromise of the Settling Parties’ positions with respect to the issues addressed herein, the Settling Parties have agreed upon the resolution of each issue addressed in the Settlement Agreement on the basis that its approval by the Commission should not be construed as an admission or concession by either Party regarding any matter of fact or law that may have been in dispute in this

proceeding. Furthermore, consistent with Rule 12.5 of the Commission's Rules, the Settling Parties intend that the approval of this Settlement Agreement by the Commission should not be construed as a precedent or statement of policy of any kind for or against either Party in any current or future proceeding with respect to any issue addressed in the Settlement Agreement.

E. The Settling Parties agree that this Settlement Agreement is an integrated agreement, so that if the Commission rejects or modifies any portion of this Settlement Agreement or modifies the obligations placed upon SJWC from those that the Settlement Agreement would impose, each Party shall have the right to withdraw. Furthermore, the Settlement Agreement is being presented as an integrated package such that Settling Parties are agreeing to the Settlement Agreement as a whole rather than agreeing to specific elements of the Settlement Agreement.

F. This Settlement Agreement is the product of a process of direct negotiation between the Settling Parties. The other party to this proceeding, WRATES, participated in the settlement process but is not a party to the Settlement Agreement. Accordingly, the Settlement Agreement is not presented as an all-party settlement.

G. The Settling Parties agree that no signatory to the Settlement Agreement assumes any personal liability as a result of his or her execution of this document. All rights and remedies of the Settling Parties with respect to the Settlement Agreement are limited to those available before the Commission.

H. This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, and the counterparts together shall constitute one and the same instrument.

I. This Settlement Agreement constitutes the entire agreement between the Settling Parties and supersedes all prior or contemporaneous agreements, negotiations, representations, warranties, and understandings of the Settling Parties with respect to the subject matter set forth herein or otherwise relevant to this proceeding.

## **II. RESOLUTION OF SPECIFIC ISSUES**

### **A. Issue 1: Failure to prorate monthly service charges**

1. SJWC will refund \$1,757,237.99 in proration refunds calculated by CPED for the period of 1987 through May of 2011. SJWC will issue credits to current customers in amounts proportional to their monthly service charges (based upon their meter sizes) and calculated to refund \$1,757,237.99, which is the amount of proration refunds calculated by CPED for the period of 1987 through May of 2011. Within ten (10) days after

issuance of a Commission decision approving the Settlement, SJWC will file a Tier 1 advice letter to provide refunds to current customers by a one-time credit appearing on their bills as soon as feasible.

2. The one-time credit to customers currently on the Water Rate Assistance Program will be increased from the amount calculated for the refund of \$1,757,237.99 to the amount of \$25 for each such customer. The total amount of this additional credit is estimated to be approximately \$350,000.

3. SJWC will invest \$5.0 million in capital investments in its public water system, to be funded by shareholders, initiated within a one-year period following Commission approval of this agreement. SJWC will not earn any return on this investment, nor will it be allowed to recover depreciation from ratepayers over the life of the investment.

4. The parties agree that this combination of credits and investment constitutes the full and final restitution by SJWC to SJWC customers for the years that SJWC failed to apply rate proration of monthly service charges on customer bills for billing periods during which changes in such service charges became effective.

#### B. Issue 2: Double billing

1. The parties agree that evidence in the record is not sufficient to support CPED's allegation of SJWC double billing its monthly service charges in connection with the alleged conversion from billing in advance to billing in arrears. SJWC denies that such alleged double billing occurred.

### III. CONCLUSION

The parties mutually believe that, based on the terms and conditions stated above, this Settlement Agreement is reasonable in light of the whole record, is consistent with the law and is in the public interest.

Respectfully submitted,

CONSUMER PROTECTION AND  
ENFORCEMENT DIVISION

By: \_\_\_\_\_

Jeanette Lo

Utilities Enforcement Branch Chief  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

Telephone: (415) 703-1225

Fax: (415) 703-4532

E-mail: [Jeanette.Lo@cpuc.ca.gov](mailto:Jeanette.Lo@cpuc.ca.gov)

July 23, 2019

SAN JOSE WATER COMPANY

By:

---

John B. Tang, P.E.

Vice-President of Regulatory  
Affairs & Government Relations

110 West Taylor Street

San Jose, CA 95110

Telephone: (408) 279-7933

Fax: (408) 279-7934

E-mail: [john.tang@sjwater.com](mailto:john.tang@sjwater.com)

July 23, 2019

**(END OF ATTACHMENT A)**